Filed 11/25/08 In re D.W. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re D.W., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. De.W., Defendant and Appellant.	G040655 (Super. Ct. No. DP013186) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Carolyn Kirkwood Judge, Gary G. Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Marsha F. Levine, under appointment by the Court of Appeal, for Defendant and Appellant.

Benjamin P. de Mayo, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

De.W. (father) appeals from an order terminating his parental rights to now eight-year-old D.W. He claims there was insufficient evidence to support a finding of adoptability and the court failed to sufficiently consider the child's relationship with a sibling as set out in Welfare & Institutions Code section 366.26, subdivision (c)(1)(B)(v) (all further statutory references are to this code). Finding neither claim meritorious, we affirm.

FACTS AND PROCEDURAL HISTORY

In March 2006 respondent Orange County Social Services Agency (SSA) took the child into custody after her mother, who is not a party to this appeal, failed to pick her up from the babysitter. The court declared the child a dependent based on failure to protect or provide support and abuse of a sibling. (§ 300, subds. (b), (g), (j).) On a prior occasion mother had failed to pick up the child's brother, Noah. (Although unclear the parties seem to believe Noah and the child are full siblings.) At the time both parents' whereabouts were unknown. The court found reunification services need not be provided and set a permanency hearing under section 366.26.

A few weeks later father was found in jail pending trial. When he spoke to a social worker, he said he did not want the child to be adopted. He also advised that Noah was staying with his friend, Rosie, and he wished for the two children to be placed together if possible. Father said he did not want visitation while in jail.

The report for the permanency hearing stated the child was adoptable but hard to place due to her severe behavioral problems, including aggressiveness and assaultive behavior, refusal to obey directions, testing of limits, and tantrums lasting up to two hours. She also had academic and learning problems. On the other hand she was young, healthy and developmentally on track, and had an engaging personality. Pursuant to the parties' stipulation, the court found termination of parental rights would not be

detrimental, and, though difficult to place, the child had a probability for adoption, although there was no prospective adoptive parent at the time. The hearing was continued for five months to give SSA a chance to find an adoptive parent. Subsequently the court held almost 40 15-day review hearings spanning the period between November 2006 and June 2008 for this purpose.

During this period, the child was placed with at least one foster family and with her maternal great-grandmother, both of whom declined to take her due to her behavioral problems. In addition, several families who were initially interested decided against it, largely for the same reason.

As part of SSA's effort, it looked into the possibility of placement with father's friend, Rosie, in response to his repeated requests to have the child stay together with Noah. Noah had been placed with Rosie pursuant to an order of a Juvenile Court of Los Angeles County. After its investigation, SSA recommended against such a placement for several reasons.

First, the child's psychological evaluation recommended that she be placed with a small family. Rosie had five children living with her and cared for three more during the day. Further, at least three of the five foster children had severe emotional problems. The Los Angeles County Department of Children and Family Services (DCFS) generally allowed only two and the child would be another. Further, DCFS asked that the child not be placed with Rosie. Noah had severe emotional problems as well and it was afraid the child, with her behavioral problems, would disrupt his stability. Finally, ultimately Rosie was not willing to adopt the child but agreed only to become her legal guardian.

Twice during this period SSA recommended changing the child's permanent plan to long-term foster care due to the unlikelihood of adoption. The court denied its section 388 petition for such a change.

In July 2007 the child was placed in foster care with Jackie, who had been licensed to provide such care for 10 years and had had more than 30 children in her home. At that time only Jackie's 10-year-old granddaughter was living with her. Although SSA discussed adoption with Jackie each month, she would not consider it until the child's tantrums were controlled.

In February 2008, SSA found V. who had previously adopted four girls with behavioral problems. She was interested in adopting another child so she could provide a loving home, and she wanted her eight-year-old daughter to have a sibling about the same age. The child's four meetings with the family went well. She enjoyed herself and seemed to relate well to the young daughter.

At that point Jackie advised SSA that she was interested in adopting the child. The child's behavior had improved significantly since her placement there, although she still had some behavioral problems at school. The child was also attached to Jackie. During this time the child told SSA and her therapist that she wanted Jackie to adopt her. She said she felt safe and got along with her.

SSA's assessment of Jackie stated that she was "committed to providing a loving, nurturing, and stable environment" for and had developed "a warm emotional relationship" with the child. She was "committed to adopting the child." The child told her social worker she wanted to stay with Jackie.

V. still wanted to adopt the child as well and sent a lengthy letter to SSA, challenging Jackie's "'sudden' change of heart" about adopting her. She stated Jackie had made numerous negative reports to her about the child's tantrums and troubled behavior, something V. claimed had never occurred when the child visited her.

At the permanency hearing, father was not present but was still in jail awaiting trial. Father's lawyer argued against termination of parental rights and that the child was not adoptable. She reiterated father's desire that the child be placed with Rosie so she could have a relationship with Noah, but acknowledged that Rosie was not willing

to adopt. Counsel questioned Jackie's sincerity and noted V.'s contact with the child had been very limited.

The child's lawyer argued she was adoptable, pointing to the two prospective families. She noted that from everything she could see, Jackie was committed to the adoption and if that did not to come to fruition, V. was a backup. She also stated the child was happy in Jackie's home and wanted to be adopted.

The court found that the child was adoptable and likely to be adopted, pointing out the initial preliminary finding of adoptability, though difficult to place. It stated that the only issue was whether SSA had found a placement and that the evidence clearly showed there were two different prospective parents. The court commented it was "perplexed" about Jackie's delay in choosing adoption but suggested it could be evidence of her "mature reflection" and "firm commitment" to the adoption. However, the child's improvement at home as opposed to school was evidence of Jackie's good care.

The court excluded Rosie as a possible placement because of her unwillingness to adopt. It also found termination of parental rights would not harm a sibling relationship.

DISCUSSION

1. Substantial Evidence of Adoptability

Father contends there was insufficient evidence of the child's adoptability. Although not entirely clear, it appears he has two grounds: first, Jackie's delay in agreeing to adopt; and second, that after terminating parental rights and finding the child was adoptable, the court ordered "psychological and developmental assessments for adoption purposes." Father asserts they are "routinely performed before parental rights are terminated, not after." (Italics omitted.) These arguments do not persuade.

At the permanency hearing the court must terminate parental rights and order the child placed for adoption if the required assessment and other evidence show "it is likely the child will be adopted . . . ." (§ 366.26, subd. (c)(1).) In reviewing a finding of adoptability under the substantial evidence test (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154), we must look at the record in the light most favorable to the findings and draw all inferences to support the ruling (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576). The record supports a finding of adoptability. That there are two different prospective adopting parents alone is evidence of the likelihood of adoption. (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.)

When a finding is made that parental rights should be terminated and that the child is probably adoptable but difficult to place as was the case here, the focus shifts to locating suitable adoptive parents. (§ 366.26, subd. (c)(3).) That occurred.

Father claims that the court's reliance on Jackie's "delayed interest in adopting" was "impulsive[]" and that it's puzzlement over Jackie's delay showed "it was not entirely convinced . . . [she] was serious about adopting [the child]." But the court specifically stated its findings that the child was adoptable and in addition to the two families interested in adopting her, the child's behavioral problems were "manageable." It also stated it had reviewed and considered the "voluminous reports," which described a positive environment in Jackie's home and a good relationship between her and the child. The report also noted all of the child's good qualities, including her improved behavior, good health, and attractiveness, additional evidence of her adoptability. This controverts father's argument that in light of the child's problematic behavior, the only evidence of her adoptability is Jackie's "'willingness' to adopt."

Father also challenges the court's "seem[ing] complacen[cy]" as to locating suitable adoptive parents under section 366.26, subdivision (c)(3) just because there were two potential families. The record, as described above, belies that argument. Further, father has no evidence but only can suppose that V. had not spent enough time with the

child to understand her behavioral problems or, consequently, to be committed to adopting her. Moreover, the fact that the court had, throughout the proceeding, insisted that SSA find a placement does not negate a finding of adoptability. Rather, it shows the court was following the dictates of section 366.26, subdivision (c)(3).

None of the cases father cites dictates a different result. In *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205 the finding of adoptability was reversed because the court failed to comply with the statutory requirement to consider the criminal and child protective services history of the stepfather who wanted to adopt. Similarly, there was no adoption assessment report of the developmentally challenged child in *In re Brian P.* (2002) 99 Cal.App.4th 616, 624. In *In re Amelia S.* (1991) 229 Cal.App.3d 1060, 1065 the only evidence of adoptability of 10 children, described as hard to place, was that foster parents of five of them were "considering" adoption. Likewise, in *In re Asia L.* (2003) 107 Cal.App.4th 498, 512 there was insufficient evidence there were suitable families willing to adopt the children, who had developmental problems. None of these facts is present here.

In the opening brief father makes a passing claim that after terminating parental rights the court referred the child for psychological and developmental testing for purposes of adoption, emphasizing that this normally is done before rights are terminated. In the reply brief, father attempts to develop that argument, asserting that there was no need for such an evaluation at that time, maintaining it should have been done at the same time as the adoption assessments before the permanency hearing. He then states that "it *seems* clear" that the court was "*apparently* concerned" (italics added) with Jackie's delayed decision to adopt and to act with "extreme caution," thus demonstrating insufficient evidence to support the finding of adoptability. This is pure speculation and contrary to our standard of review requiring us view the record in the light most favorable to the decision and draw all reasonable inferences in support of it.

2. Sibling Relationship

Father argues that in light of his contention the child is not adoptable, the court erred in terminating parental rights. What it should have done, he asserts, is order legal guardianship, either with Jackie or another guardian. We disagree.

We have determined the record supports the finding the child is adoptable. Excluding other exceptions not relevant here, the court is required to terminate parental rights and select adoption unless termination would substantially interfere with the child's sibling relationship, considering its "nature and extent." (§ 366.26, subd. (c)(1)(B)(v).) In making that determination the court may look at whether the child and the sibling were raised together in the same home, whether the children have strong, close bonds or shared significant experiences, and whether continued contact is in the best interest, including a "long-term emotional interest," of the child when compared to the benefits of adoption. (*Ibid*.)

Father failed to meet his burden to show there is a "'sufficiently significant'" relationship, the severance of which would cause substantial detriment to the child. (*In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017.) Rather, he acknowledges "there is little evidence of the extent of the relationship between the[] siblings" or "how long they lived together . . . ." His only basis for the argument is that the child's "familiarity with her brother" is a "seemingly positive" part of her life. Given the evidence of adoptability and the lack of evidence of any substantial relationship, this does not persuade.

DISPOSITION

The order is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

IKOLA, J.